

period of confinement. This period, however, could have been credited towards any sentence imposed in the second case if that case had not been dismissed entirely as part of Fransua's plea deal. Thus, though Fransua did not receive the 108 days of PSCC, he still benefited from the disposition of his two cases.

C. Both the First and Last Days of Confinement Must Be Included in PSCC Calculations

¶17 Reviewing the relevant statutes de novo, the division found that Fransua was entitled to PSCC for both the first and last days of each period of presentence confinement. *Id.* at ¶¶ 16-23. We agree. The plain language of the PSCC statute requires that the defendant receive credit for “the entire period of such confinement.” § 18-1.3-405.

¶18 The People argue that the specific language of the PSCC statute should be read together with the state's general time-computation statute, which provides that “[i]n computing a period of days, the first day is excluded and the last day is included.” § 2-4-108(1), C.R.S. (2019). However, the People concede that subsection (2) of this general time-computation statute does not apply to PSCC. That subsection provides that a time period will be extended if the last day of that period falls on a weekend or a holiday. § 2-4-108(2) (“If the last day of any period is a Saturday, Sunday, or legal holiday, the period is extended to include the next day which is not a Saturday, Sunday, or legal holiday.”). It simply cannot be the case that one subsection of the statute applies to the calculation of PSCC while another does not. Accordingly, we hold that section 2-4-108(1) does not dictate the calculation of PSCC.

[6] ¶19 Instead, the plain language of the PSCC statute controls. That statute provides that “[a] person who is confined for an offense prior to the imposition of sentence for said offense is entitled to credit against the term of his or her sentence *for the entire period of such confinement.*” § 18-1.3-405 (emphasis added). Although the PSCC statute does not specify the start and end dates for the purpose of calculating PSCC, based on the plain meaning of the word “entire,” we

hold that a defendant is entitled to credit for both the first and last days that he was confined. Consequently, the case should be remanded to the district court for calculation of the correct amount of PSCC.

III. Conclusion

¶20 For the foregoing reasons, we affirm the decision of the court of appeals and remand the case for correction of the amount of PSCC awarded to Fransua consistent with this opinion.



2019 CO 95

Alysha WALTON, Petitioner,

v.

**The PEOPLE of the State of
Colorado, Respondent**

Supreme Court Case No. 18SC84

Supreme Court of Colorado.

November 18, 2019

Background: Motorist was convicted, on guilty plea entered in the El Paso County Court, of driving under the influence (DUI). The District Court, El Paso County, No. 17CV30785, G. David Miller, J., upheld probation condition imposed by the County Court, and motorist appealed.

Holdings: The Supreme Court, Hood, J., held that motorist convicted of DUI should not have been barred, as condition of her probation, from using medical marijuana, as she was lawfully authorized to do by the state, without finding that this was necessary and appropriate to promote statutory sentencing goals.

Disapproved.

1. Criminal Law ⇌ 1134.26

Supreme Court would address issue of propriety of condition of probation which was

imposed on motorist convicted of driving under the influence (DUI), and which prohibited motorist from making even any medical use of marijuana, though motorist had completed her sentence such that the issue was arguably moot; issue was an important issue, that was capable of repetition yet potentially evading review. Colo. Rev. Stat. Ann. § 18-1.3-204(2)(a)(VIII).

2. Sentencing and Punishment ⇌1962

Trial courts have broad discretion to craft appropriate conditions of probation.

3. Criminal Law ⇌1139

Supreme Court would review de novo trial court's interpretation of probation conditions statute. Colo. Rev. Stat. Ann. § 18-1.3-204.

4. Statutes ⇌1072

Primary goal of statutory construction is to ascertain and give effect to legislature's intent.

5. Statutes ⇌1079, 1091

In interpreting a statute, court looks first to the statute's language, giving statutory words and phrases their plain and ordinary meanings.

6. Statutes ⇌1111

If legislative intent is clear from plain language of statute, then court need look no further than the plain language for statute's meaning.

7. Sentencing and Punishment ⇌1898, 1980(1)

Probation conditions statute, in prohibiting a court from barring a defendant, as condition of his probation, from possessing or using medical marijuana, unless "court determines, based on any material evidence, that a prohibition against the possession or use of medical marijuana is necessary and appropriate to accomplish the goals of sentencing," creates presumption that defendant may use medical marijuana while serving a probationary sentence, and shifts to prosecution the burden of rebutting this presumption by pointing court to material evidence showing why it should prohibit a particular defendant from using medical marijuana while on pro-

bation. Colo. Rev. Stat. Ann. § 18-1.3-204(2)(a)(VIII).

8. Sentencing and Punishment ⇌1911

In deciding whether prosecution has rebutted statutory presumption in favor of allowing defendant to use medical marijuana while on probation, by demonstrating that bar on medical marijuana is "necessary and appropriate to accomplish the goals of sentencing," sentencing court need not necessarily make explicit findings on each of the statutory sentencing goals, but must make findings sufficient to show that it has considered these sentencing goals, and that a prohibition condition is necessary and appropriate to accomplish those goals in the case before it. Colo. Rev. Stat. Ann. §§ 18-1.3-204(2)(a)(VIII), 18-1-102.5.

9. Sentencing and Punishment ⇌1902, 1980(1)

In order to rebut statutory presumption in favor of allowing defendant to use medical marijuana while on probation, by demonstrating that bar on medical marijuana is "necessary and appropriate to accomplish the goals of sentencing," prosecution does not necessarily need to produce evidence beyond what is likely already before the court, such as presentence investigation report, the defendant's criminal history, and any evaluation that was conducted. Colo. Rev. Stat. Ann. § 18-1.3-204(2)(a)(VIII).

10. Sentencing and Punishment ⇌1910, 1980(1)

Before it imposes a probation condition barring a defendant from possessing or using medical marijuana, sentencing court must make the required findings, based on material evidence, and considering the particular defendant and his or her circumstances. Colo. Rev. Stat. Ann. § 18-1.3-204(2)(a)(VIII).

11. Sentencing and Punishment ⇌1910, 1980(2)

Motorist convicted of driving under the influence (DUI) should not have been barred, as condition of her probation, from using medical marijuana, as she was lawfully authorized to do by the state, based solely on her failure to produce expert medical witness to testify regarding her need for medical

marijuana, without a finding by the court that prohibiting motorist's otherwise-authorized medical marijuana use was necessary and appropriate to promote statutory sentencing goals. Colo. Rev. Stat. Ann. § 18-1.3-204(2)(a)(VIII).

Certiorari to the District Court, El Paso County District Court Case No. 17CV30785, Honorable G. David Miller, Judge

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En Banc

JUSTICE HOOD delivered the Opinion of the Court.

¶1 Alysha Walton pled guilty to driving under the influence (“DUI”), and the county court sentenced her to twelve months of unsupervised probation. Because Walton did not provide a medical professional to testify regarding her authorization to use medical marijuana, the court, as a condition of probation, prohibited Walton from using medical marijuana. Walton appealed, and the district court affirmed the county court’s decision.

¶2 We hold that the plain language of section 18-1.3-204(2)(a)(VIII), C.R.S. (2019) (“the probation conditions statute”), creates a presumption that a defendant may use medical marijuana while serving a sentence to probation unless a statutory exception applies. The relevant exception here applies if the sentencing court finds, based on material evidence, that prohibiting this defendant’s otherwise-authorized medical marijuana use is necessary and appropriate to promote statutory sentencing goals. Because the county court made no such findings here, we disprove of the district court’s judgment affirming the county court’s decision. (Because the defendant has completed her sentence, reversing and remanding would be pointless.)

I. Facts and Procedural History

¶3 Walton was pulled over one night for speeding and weaving. The police officers who stopped her smelled alcohol and asked her to submit to roadside sobriety testing. When she failed to perform the maneuvers to the officers’ satisfaction, the officers arrested her. She told them she had consumed two alcoholic beverages that night and no other intoxicants. There is no evidence contradicting Walton’s assertion that the only intoxicant she had consumed was alcohol. Indeed, the record reveals that the officers didn’t even suspect that Walton was under the influence of anything other than alcohol. The results of a chemical test revealed that Walton’s breath alcohol content was above the legal limit for driving.

¶4 Walton was charged with DUI, DUI per se, and speeding. She pled guilty to the DUI offense and agreed to a deferred judgment and sentence in exchange for dismissal of the other charges. During the presentence alcohol evaluation, Walton informed the probation officer that she had a medical marijuana registry identification card. At the initial sentencing hearing, the county court judge asked if Walton would be requesting permission to use medical marijuana while on probation; if so, the court stated, a medical professional would need to testify on her behalf. Apparently, this judge had a standing policy requiring such testimony if a defendant sought to use medical marijuana while on probation. Counsel indicated that she would seek permission and requested a continuance to secure a medical professional.

¶5 At the subsequent sentencing hearing, counsel produced Walton’s medical marijuana authorization card and several supporting documents to establish its authenticity but did not produce a medical professional to testify. The court entered Walton’s guilty plea and sentenced her to twelve months of unsupervised probation. As a condition of probation, the court prohibited Walton from using medical marijuana.

¶6 Walton appealed the prohibition condition. The district court concluded that the county court had not abused its discretion in imposing the prohibition against medical

marijuana use as a condition of probation. Walton then petitioned this court to review the district court's decision, and we granted certiorari.¹

II. Analysis

¶7 After briefly discussing the standard of review, we interpret section 18-1.3-204(2)(a)(VIII). We conclude that the statute's plain language unambiguously creates a presumption that a defendant may use authorized medical marijuana while serving a term of probation. It also creates two exceptions to this presumption, only one of which is relevant here. We address (1) who bears the burden of establishing that exception and (2) what findings the court must make to invoke it.

A. Mootness and Standard of Review

[1] ¶8 Walton completed her sentence on May 24, 2018. Thus, the issue on certiorari is arguably moot. But we choose to address it "because it falls within the exception to the mootness doctrine that allows review of 'important issues capable of repetition yet potentially evading review.'" *People v. Brockelman*, 933 P.2d 1315, 1318 (Colo. 1997) (quoting *People v. Quinonez*, 735 P.2d 159, 161 n.1 (Colo. 1987)). Were we to wait for another case like this one to find its way to us with a defendant still serving her sentence, we might wait in vain. DUI sentences are often shorter than the time necessary for appeal and certiorari review. Meanwhile, this important issue regarding a defendant's legislative permission to use medical marijuana while on probation will persist in El Paso County and perhaps elsewhere throughout the State of Colorado.

[2, 3] ¶9 As for the standard of review, trial courts of course have broad discretion to craft appropriate conditions of probation. *Id.* But we review de novo the county court's

interpretation of section 18-1.3-204. *See People v. Iannicelli*, 2019 CO 80, ¶ 19, 449 P.3d 387, 391.

[4–6] ¶10 In so doing, our primary goal is to ascertain and give effect to the legislature's intent by looking first to the statute's language, giving words and phrases their plain and ordinary meanings. *Id.* If the legislative intent is clear from the plain language, we need look no further. *See Cowen v. People*, 2018 CO 96, ¶ 12, 431 P.3d 215, 218.

B. The Probation Conditions Statute

¶11 The probation conditions statute provides that "[t]he conditions of probation shall be such as the court in its discretion deems reasonably necessary to ensure that the defendant will lead a law-abiding life and to assist the defendant in doing so." § 18-1.3-204(1)(a).

[7] ¶12 The statute further provides that as a condition of probation, the court may require that the defendant . . . [r]efrain from . . . any unlawful use of controlled substances, as defined in section 18-18-102(5), or of any other dangerous or abusable drug without a prescription; *except that the court shall not, as a condition of probation, prohibit the possession or use of medical marijuana*, as authorized pursuant to section 14 of article XVIII of the state constitution, *unless . . .*

(B) *The court determines, based on any material evidence, that a prohibition against the possession or use of medical marijuana is necessary and appropriate to accomplish the goals of sentencing as stated in section 18-1-102.5.*

§ 18-1.3-204(2)(a)(VIII) (emphases added).²

¶13 The foregoing language presumes that authorized medical marijuana use is permis-

sentencing, thereby denying her rights under the Colorado Constitution.

1. We granted certiorari to review the following issue:

1. Whether the district court erred in finding no abuse of discretion where the trial court imposed a prohibition against the use of medical marijuana on probation without basing that prohibition on any material evidence that the prohibition was necessary and appropriate to accomplish the goals of

2. Section 18-1-102.5(1), C.R.S. (2019), the statute referenced in subpart (B), provides that the goals of sentencing are

(a) To punish a convicted offender by assuring the imposition of a sentence he deserves in relation to the seriousness of his offense;

sible while a defendant is on probation. Critically, a court “shall not” prohibit the authorized use of medical marijuana as a condition of probation. § 18-1.3-204(2)(a)(VIII). “Shall” is mandatory unless there is a clear indication otherwise. *Riley v. People*, 104 P.3d 218, 221 (Colo. 2004).

¶14 The statute, however, also creates exceptions to this presumption by use of the word “unless.” See, e.g., *Greene v. State*, 237 Md.App. 502, 186 A.3d 207, 220 (2018) (holding that use of “unless” in a statute creates an exception); see also Merriam-Webster Dictionary, <https://www.merriamwebster.com/dictionary/unless> [<https://perma.cc/MS95-FAW3>] (defining “unless” as “except on the condition that: under any other circumstance than”).

¶15 The relevant exception here requires the court to determine, based on “material evidence,” that a prohibition against the use of authorized medical marijuana while on probation is “necessary and appropriate to accomplish the goals of sentencing.” § 18-1.3-204(2)(a)(VIII)(B).³

¶16 Generally, the party against whom a presumption is directed bears the burden of going forward with evidence to rebut it. CRE 301 (“[A] presumption imposes upon the party against whom it is directed the burden of

going forward with evidence to rebut or meet the presumption”); *People v. Juvenile Ct.*, 893 P.2d 81, 93 (Colo. 1995) (applying the premise of CRE 301 in a criminal context).

[8–10] ¶17 Here, because the presumption favors defendants by allowing them to use authorized medical marijuana while on probation, the burden of rebutting it falls on the prosecution. It is therefore the prosecution’s burden to point the court to material evidence showing why the court should prohibit this particular defendant from using authorized medical marijuana while on probation. In considering the evidence, the sentencing court need not necessarily make explicit findings on each of the sentencing goals listed in section 18-1-102.5, but it must make findings sufficient to show that it has considered the sentencing goals and that a prohibition condition is necessary and appropriate to accomplish those goals in the case before it.⁴

[11] ¶18 That is not what happened here. At the sentencing hearing, the county court asked defense counsel if she had a medical professional available to testify for Walton. Defense counsel said no, though she had presented Walton’s state-issued medical marijuana authorization card, the physician certificate that described Walton’s medical conditions for which marijuana had been au-

(b) To assure the fair and consistent treatment of all convicted offenders by eliminating unjustified disparity in sentences, providing fair warning of the nature of the sentence to be imposed, and establishing fair procedures for the imposition of sentences;

(c) To prevent crime and promote respect for the law by providing an effective deterrent to others likely to commit similar offenses;

(d) To promote rehabilitation by encouraging correctional programs that elicit the voluntary cooperation and participation of convicted offenders;

(e) To select a sentence, a sentence length, and a level of supervision that addresses the offender’s individual characteristics and reduces the potential that the offender will engage in criminal conduct after completing his or her sentence; and

(f) To promote acceptance of responsibility and accountability by offenders and to provide restoration and healing for victims and the community while attempting to reduce recidivism and the costs to society by the use of restorative justice practices.

3. The statute also creates an exception where the defendant is sentenced to probation for a convic-

tion under the Colorado Medical Marijuana Code; however, that exception is not at issue here.

4. This is not to say that the prosecution necessarily has to produce evidence beyond what is likely already before the court, such as the presentence investigation report, the defendant’s criminal history, and any evaluation that was conducted. See CRE 1101(d)(3) (rules of evidence do not apply to sentencing proceedings). But the court must make the required findings, based on material evidence, and considering this particular defendant and his or her circumstances before imposing a prohibition condition. See *People v. Padilla*, 907 P.2d 601, 609 (Colo. 1995) (“The discretionary sentencing process is intended to allow individualized sentencing; the court tailors a sentence consistent with the defendant’s prior behavior and other factors.”). And, if the evidence before the court is insufficient to show that such prohibition is necessary and appropriate for this defendant, then the prosecution has failed to carry its burden to overcome the presumption.

thorized, and the doctor's medical license information. After counsel argued that Walton should be able to use authorized medical marijuana while on probation, the court found that it had "no information about her medical situation and so [it had] nothing on which to base any kind of authority for medical marijuana." The court continued, finding "that without any kind of [countervailing] evidence presented by the Defense that generally speaking it's not appropriate for people in DUI classes to be under the influence of either alcohol or drugs." The court then imposed the prohibition condition.

¶19 In reviewing this decision, the district court first noted that the county court seemed to have a standing policy requiring any defendant who wished to use medical marijuana while on probation to present a medical professional to testify that "there is appropriate authority for the use of medical marijuana." The district court found this policy reasonable in light of the sentencing goal of "providing fair and consistent treatment of all convicted offenders by eliminating unjustified disparity in sentencing, providing fair warning of the nature of the sentence to be imposed, and establishing fair procedures for the imposition of sentences." The district court also found the county court's policy to be a reasonable way to verify a defendant's authorization to use medical marijuana and to reduce the risk of recidivism. Accordingly, the district court concluded that the county court had not abused its discretion by requiring Walton to prove "the basis and existence of [her] medical marijuana registration" with testimony from a medical professional and by then prohibiting medical marijuana use as a condition of probation when Walton failed to produce such testimony.

5. The court may require that a defendant produce a medical marijuana card in the first instance to show authorization. But the court need not assume that all cards are valid. The constitution requires the state health agency to create and maintain a confidential registry of individuals "who have applied for and are entitled to receive a registry identification card." Colo. Const. art. XVIII, § 14(3). To be placed on the registry, an individual must submit certain documentation, including a physician's diagnosis of the individual's debilitating medical condition

¶20 For two reasons, we disagree. First, the authenticity of Walton's medical marijuana card was not at issue in this case—no one argued that Walton had not lawfully obtained her card or that she lacked state-sanctioned authority to use medical marijuana. Thus, the district court's focus on the county court's desire to further probe the legitimacy of Walton's authorization was misplaced. To the extent that the county court sought more than a valid card to establish that Walton was "authorized," as that term is used in the probation conditions statute, it imposed a burden greater than that created by the legislature.⁵

¶21 Second, the county court's blanket policy contradicts the plain language of the probation conditions statute, which requires the court to base any decision to prohibit medical marijuana use on the particular defendant's circumstances, after considering the material evidence before it and the statutory sentencing goals. Thus, the district court erred by affirming the county court's prohibition condition based on this blanket policy.

III. Conclusion

¶22 We disapprove of the district court's judgment.



and identification information for that physician. Colo. Const. art. XVIII, § 14(3)(b). And although the information within that registry is confidential and can only be accessed in very limited circumstances, *see* Colo. Const. art. XVIII, § 14(3)(a), there is a public website that lists whether a particular card has been voided, denied, or revoked. *See Law Enforcement – Medical Marijuana Registry*, Colo. Dep't of Pub. Health & Env't, <https://www.colorado.gov/pacific/cdphe/law-enforcement-medical-marijuana-registry> [<https://perma.cc/M2RP-W7ZN>].